MEMORANDUM OF UNDERSTANDING
for a
COMPREHENSIVE PORT IMPROVEMENT PLAN
for the
PORT OF NEW YORK AND NEW JERSEY

STATEMENT OF INTENT

The purpose of this Memorandum of Understanding (MOU) is to set forth a cooperative approach, among port project sponsors, regulatory agencies, resource agencies, and regional stakeholders, for implementing environmental improvement and economic development decisions for the Port of New York and New Jersey.

I. BACKGROUND

A. Introduction

In its early history, before deepening of the Port of New York and New Jersey (Port) by constructing channels, the Port was a relatively shallow estuary with depths of approximately 25 feet or less throughout almost the whole New York/New Jersey area. Since before the beginning of the nineteenth century, maritime activities, cargo demand, and the population of the local and regional area have increased steadily. While historic port development has been justified because of economic and transportation needs, the ecological functions and flora and fauna populations of the Port have been under ever increasing stress without the benefit of a comprehensive assessment of the environmental impacts associated with such Port development. Consistent with applicable laws, the Comprehensive Port Improvement Plan (CPIP), and its requisite environmental impact statement (CPIP-EIS), will seek to avoid such environmental impacts when possible, and otherwise minimize them. The CPIP will also look to ensure, consistent with applicable laws, that any adverse impacts associated with its implementation are compensated for on at least a value-for-value basis. Moreover, in recognition of the goals of the Harbor Estuary Program, the CPIP will endeavor, to the maximum extent possible, to advance the restoration of the Harbor and its environment.

Today, the Port plays a vital part in the economy of the New York/New Jersey metropolitan area. The Port provides same day access as well as savings in transportation costs to more than 18 million consumers in the New York/New Jersey metropolitan area, and second-day access to another 80 million consumers in the Midwestern United States and Eastern Canada. It is presently the third largest container port in North America and the largest container center on the East Coast. It is also the largest auto port and the largest petroleum port in the United States. The ocean carrier Maersk-SeaLand recently selected the Port of New York and New Jersey as its northeast load center for the 21st

century. Maersk-SeaLand and other ocean carriers are deploying new "post-Panamax" vessels which would require, when fully loaded, channel and berth depths of 50 feet. A 45 foot channel deepening project is underway at the Kill van Kull and Newark Bay Channels in the Port to meet the immediate demand for improved access to the Port Newark/Elizabeth Terminal. Two other channels, Port Jersey Channel and Arthur Kill Channel, are authorized to be deepened to 41 feet.

B. The New York and New Jersey Harbor Navigation Feasibility Study

The U.S. Army Corps of Engineers (USACE) is currently considering future navigation improvements, including deepening existing channels to 50 feet in its New York and New Jersey Harbor Navigation Study (HNS). The primary purpose of the HNS is to evaluate the potential national benefits that could be derived from future federal investment in the construction of deeper channels in the Port to accommodate the larger container vessels joining the international fleet.

According to the HNS, the projected year 2060 cargo demands for the metropolitan region exceed 19 million Twenty-foot Equivalent Units (TEUs) of cargo based upon Port capture of the maximum market share possible. However, the USACE's HNS (based on the projected capacity of existing port facilities meeting a theoretical productivity efficiency of 3,500 lifts per acre per year by 2040) indicates that the capacity of the Port facilities could only be about 9.6 million TEUs. Filling this projected gap of approximately 9.4 million TEUs without further expansion of the Port's capacity would likely require transporting cargo from other ports via long distance truck or rail. Deepening channels allows deeper draft vessels to enter the Port and therefore gives existing Port facilities the ability to operate in an economically efficient manner. Under this scenario, the projected gap could be closed by phasing in landside improvements to Port facilities and transportation infrastructure.

The environmental resources/issues of concern associated with development at the Port include, among other things, air quality, traffic flow, noise levels, public access, aesthetic values, natural resources, economic factors, community character, and water quality issues. While the HNS will include upland development issues in its cumulative impacts assessment, it will not fully address the issues associated with the maximum cargo demands noted above. The CPIP will be the mechanism through which to comprehensively address the issue of how to proceed with development at the Port in the most economically efficient and environmentally protective manner possible.

C. Other On-Going Studies

There are several key resources available for use during the development of the CPIP and the accompanying CPIP-EIS:

1. Strategic Port Investment Analysis – The Port Authority of New York and New Jersey (Port Authority), in cooperation with the States of New York and New

Jersey, has undertaken a study to determine the investments in marine terminals and related infrastructure that would be required to accommodate the growing volume of international cargo shipped through the Port. The study focused on six major planning objectives: (1) maintain market share; (2) expand market share; (3) sustain current customers; (4) add new customers; (5) improve financial performance; and (6) expand regional economic benefits. The study identified possible sites for development of up to 800 acres of new container terminal space (which could include filling waters of the U.S. adjacent to existing port facilities) and possible strategic business initiatives that could be used to increase port capacity and reduce the need for new container space.

2. Strategic Plan for Redevelopment of the Port of New York – The New York City Economic Development Corporation has prepared a plan identifying a series of targeted investments to develop cargo terminals, as well as to improve highway and rail access, public access and environmental mitigation in New York over the period from 1999 to 2020. The plan calls for developing or improving 1,200 acres of container, auto, break bulk, rail and public open space facilities.

3. NewYork/NewJersey Harbor Comprehensive Conservation and Management Plan (CCMP) – In 1997, the U.S. Environmental Protection Agency (USEPA) Regional Administrator and the Governors of New York and New Jersey signed the CCMP which had been prepared for the New York/New Jersey Harbor Estuary Program, pursuant to Section 320 of the Federal Clean Water Act of 1987. The CCMP addresses a number of environmental issues of concern to the Port including habitat, toxic contamination, dredged material, pathogens, nutrients and organic enrichment, floatables, and rainfall induced discharges. The CCMP was created with participation from federal, state, and local governments, universities, industry, environmental groups and citizens. With commitments and recommendations on most actions and well-developed modules for toxics reduction and habitat restoration, the program has already realized some environmental benefits to the estuary. One area the program is currently focusing considerable attention on is the development of Total Maximum Daily Loads (TMDLs) for toxics, pathogens and nutrients.

4. Cross Harbor Freight Movement Study - Because freight movement in New York City and the surrounding region is confronted with congestion due, in part, to the ever increasing use of trucks and their impact on the highway network, the federally-funded Cross Harbor Freight Movement Study was undertaken to identify alternative modal strategies to improve the movement of goods across New York Harbor, including Transportation Systems Management (TSM), rail carfloats, a rail freight tunnel, and a rail/truck tunnel.

5. Dredged Material Management Plan (DMMP) - USACE policy (EC-1165-2-200) requires each of its Districts to prepare a DMMP for maintaining Federal Navigation channels for at least 20 years at a time. A DMMP must identify how much material has to be dredged to maintain Federal channels and how the dredged material will be managed in an economically sound and environmentally

acceptable manner. The plan is intended to ensure that projects can be maintained, thereby justifying continued investment of Federal funds. The DMMP for the Port goes beyond this goal of maintaining Federal navigation projects; it includes private and/or local dredging needs as well. The DMMP strives to develop a regionally supported comprehensive plan to meet all dredged material management needs for the Port.

6. New York City Local Waterfront Revitalization Program (LWRP) - The New York City Department of City Planning administers the City's LWRP. The program is a response to local, State, and Federal concerns about the deterioration and inappropriate use of the waterfront. The program, approved by and part of the State's Coastal Zone Management program, consists of 44 statewide policies for protection and improvement of the waterfront, and 12 policies specifically applicable to the City of New York. These policies establish a framework for determining an action's consistency with public policy goals for waterfront development.

7. New York City Freight Synthesis Study - In October 1999, the New York City Department of Transportation developed a Freight Synthesis Study that provides a comprehensive overview of the studies produced within the past decade on regional freight transportation, using the information contained in those documents to identify key issues, conclusions and recommendations regarding future waterborne, rail, and truck freight movement. A multi-modal approach to freight movement that will address the growing highway congestion problems is recommended by the report.

These resources may be augmented by other sources including federal, state, and local planning documents, transportation studies, environmental investigations, and financial analyses.

D. Port Expansion Overview

In light of the projected growth of commerce, the Port Authority, the States of New York and New Jersey, and the City of New York have recently evaluated opportunities for expanding the Port's capacity and enhancing the Port region's cargo transportation system. Port project sponsors wish to maximize the Port's market share and to achieve greater cargo throughput capacity to service local and regional demands which would in turn produce significant regional economic benefits.

Enhancing landside productivity, expanding existing facilities, and developing new terminals are three means to provide additional throughput capacity. Increasing capacity by enhancing landside productivity and reducing traffic congestion by avoiding unnecessary reliance on trucks allows for Port growth with the least impact on the environment. Reduced impacts on water quality, aquatic and upland habitats, and air quality are the most noticeable benefits of this approach. Currently, the port community is aggressively seeking ways to increase terminal throughput capacity by enhancing landside productivity. However, it is unlikely that productivity improvements alone will

allow the Port to meet all of the anticipated capacity demand. Consequently, options for expansion of existing terminals and creation of new terminals may be required. Federal, state, and local permits, which would include the development and implementation of requisite mitigation, may need to be obtained for terminal construction.

II. PREPARATION OF THE CPIP AND CPIP-EIS

A. Introduction

As discussed above, because the Port is expected to experience significant capacity demand over the next 60 years, and because in the past most Port improvement projects have been evaluated individually, development of the CPIP, considering the Port as a system, including terminal operations, intermodal services, landside logistical operations, and environmental parameters, presents an opportunity to consider economically efficient development hand in hand with a comprehensive environmental protection strategy. In contemplation of this demand, the parties to this MOU agree to prepare the CPIP for Port improvement activities.

The CPIP has the potential to identify the need for several major federal, state, or local actions (e.g., actions to permit fill for expansion of port facilities, modification and/or expansion of existing transportation networks, channel improvements, and habitat enhancement and/or restoration projects, and wetland mitigation banks). Where these actions would be major actions that could cause significant environmental effects, the decision making process associated with these actions would require the preparation of an EIS pursuant to the National Environmental Policy Act (NEPA) and applicable state and local environmental law. In an effort to consolidate and effectively use limited resources, the parties to this MOU agree that the most effective approach would be to prepare an EIS on anticipated port improvement activities that may require Federal regulatory or other consideration. The Consortium (identified below), through the Port Authority, has requested the USACE's participation in the CPIP and CPIP-EIS because it expects that the CPIP will likely propose actions requiring Department of Army permits.

B. Parties Responsible for the Preparation of the CPIP and CPIP-EIS

Associated infrastructure project sponsors, including the Port Authority, the States of New York and New Jersey, and the City of New York, will form a Consortium to advance and/or support future Port economic development and environmental restoration proposals. By mutual agreement, the Consortium will direct, manage, and provide funds for the CPIP preparation, and provide funds and data to support the preparation of the requisite CPIP-EIS. The federal Co-lead agencies, as defined in Section II.B.ii, below, in coordination with the parties to this MOU, will select the contractor responsible for preparing the CPIP-EIS pursuant to 40 CFR 1506.5(c). The contractor will develop preliminary drafts of the CPIP-EIS documents, subject to approval by the Co-lead agencies, and will be responsive to input provided by cooperating agencies. In addition, the Consortium will play an active role in all public participation activities.

The following agencies and organizations have expressed an interest in participating in the CPIP and CPIP-EIS processes. Upon signature, the agencies/organizations agree to participate according to the responsibility structures described below:

i) CPIP Responsibility Structure:

Consortium: Port Authority, New Jersey Maritime Resources, Empire State Development Corporation, and New York City Economic Development Corporation.

Responsibilities include: cooperatively analyzing Port efficiency, expansion, and development proposals; formulating these proposals into the CPIP; making recommendations on permit requests submitted by individual Consortium members; conducting appropriate public participation activities; reviewing, and preparing CPIP and coastal consistency documents; coordinating with Cooperating and Participating agencies; and additional activities as defined in other sections of this MOU.

Participating Agencies: USACE, USEPA, U.S. Maritime Administration, U.S. Surface Transportation Board, Federal Highway Administration, U.S. Coast Guard, U.S. Fish and Wildlife Service, Federal Railroad Administration, Federal Transit Administration, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, New York State Department of Environmental Conservation, New York State Department of State, New York State Department of Transportation, New York Metropolitan Transportation Council, and the North Jersey Transportation Planning Authority, New York City Department of City Planning, New York City Department of Environmental Protection, New York City Department of Transportation, and interested local Port municipalities that apply for Consortium membership.

Responsibilities include: reviewing materials, participating in regular meetings, and providing guidance and advice in areas of special expertise.

ii) CPIP-EIS Responsibility Structure:

Co-lead Agencies: USEPA, USACE, New Jersey Maritime Resources, and the Empire State Development Corporation.

Responsibilities include: independently evaluating and reviewing all NEPA documents; conducting appropriate public participation activities required under NEPA and other statutes and regulations; and exercising authority consistent with applicable law. The federal Co-lead agencies, in coordination with the parties to this MOU, will select the contractor responsible for preparing the CPIP-EIS pursuant to 40 CFR 1506.5(c).

Cooperating Agencies: U.S. Maritime Administration, U.S. Surface Transportation Board, U.S. Coast Guard, U.S. Fish and Wildlife Service, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Federal Highway Administration, Federal Railroad Administration, Federal Transit Administration, Port Authority, New Jersey Department of Environmental Protection, New Jersey Department of Transportation, New York State Department of Environmental Conservation, New York State Department of State, New York State Department of Transportation, New York City Economic Development Corporation, New York City Department of Environmental Protection, New York City Department of City Planning, New York City Department of Transportation, New York Metropolitan Transportation Council, and the North Jersey Transportation Planning Authority.

Responsibilities include: reviewing materials, participating in regular meetings, and providing guidance and advice in areas of special expertise.

The responsibilities outlined for Consortium, co-lead, and the cooperating and participating agencies for both the CPIP and CPIP-EIS are not exhaustive and not all listed agencies and municipalities shall be required to participate in all listed activities. Contractor costs of the preparation of the CPIP-EIS shall be borne by the members of the Consortium and paid by a designated Consortium member.

C. Scope of the CPIP

The CPIP will be developed to support the goals defined by the President's Council for Sustainable Development (PCSD) (June 1993). These goals include sufficient growth to ensure economic prosperity while conserving natural resources and ensuring the benefits of clean air, water, and a healthy environment. The development of the CPIP and its EIS is an example of good stewardship with Port stakeholders taking "full responsibility for the economic, environmental, and social consequences of their actions." Moreover, one of the objectives of the CPIP will be to apply "green port" planning principles to the Port.

Similarly, the CPIP will look to further the objectives of the Joint Dredging Plan for the Port of New York and New Jersey, agreed to by Governors Pataki and Whitman in October 1996. Among the Plan's objectives is maintaining and strengthening the economic vitality of the Port region. The Plan recognizes that successful economic development of the Port must ensure that the Harbor is preserved as a vital natural resource that can be enjoyed by all of its constituents. To this end, the CPIP will consider and provide a plan for both port facilities enhancements and improvements to the natural resources of the Harbor.

The CPIP shall evaluate future cargo handling capacity needs and alternatives for the Port, including cargo handling capacity: (1) at the Port facilities proper; (2) immediately off the Port facility's premises; and (3) throughout the "Port District", which is defined, in bi-state legislation, as roughly the area encompassed by a 25 mile radius centered around the Statue of Liberty.

The CPIP will look to ensure that future development planning to the year 2060 is adequately evaluated for compliance with all applicable federal, state, and local laws and regulations, including, at a minimum, NEPA, Coastal Zone Management Act, Clean Water Act, Rivers and Harbors Act, Clean Air Act, Fish and Wildlife Coordination Act, National Historic Preservation Act, Endangered Species Act, Transportation Equity Act for the 21st Century, and applicable state and local laws. To the maximum extent possible, the CPIP will make use of existing data that have resulted from other plans, studies, and environmental analyses.

In particular, the CPIP shall define the specific water and landside infrastructure development initiatives that individual Consortium members believe to be necessary to meet the region's capacity demand of 19 million TEU (which includes the unsatisfied capacity demand of 9.4 million TEU) by the year 2060. The plan shall also consider environmental issues, including impact avoidance, minimization and mitigation, air quality, habitat/harbor preservation and restoration opportunities, public access, and sediment contaminant reduction.

The public participation process associated with the environmental analysis of the CPIP shall meet the goal of "Civic Engagement" offering "opportunity for citizens, businesses, and communities to participate in and influence the natural resource, environmental, and economic decisions that affect them." (PCSD June 1993)

D. Scope of the CPIP-EIS

The CPIP shall be accompanied by a thorough analysis of reasonable viable alternatives for development of the Port, as a complex regional system, through the CPIP-EIS. Particular attention will be given to the potential impacts of any proposed fills, new pier or berthing facilities, dredging and disposal operations, waterway and land side traffic congestion, air pollution, and other issues identified during the scoping process.

At a minimum, the geographic scope of the CPIP-EIS will be the "Port District", which is defined, in bi-state legislation, as roughly the area encompassed by a 25 mile radius centered around the Statue of Liberty. This geographic scope may be expanded based on the scoping process.

The CPIP-EIS shall project scenarios to the year 2060 (50 years beyond the 2010 baseline used previously by the USACE for cargo projections) with particular detail and focus on the 2010 and 2015 milestones.

Pursuant to 40 CFR Section 1502.14, the types of alternatives to be rigorously explored and objectively evaluated shall include all reasonable alternatives including those alternatives that are not within the jurisdiction of the Co-lead agencies. For alternatives that are eliminated from detailed study, there shall be a discussion of the reasons for their having been eliminated. The four types of alternatives below are not exhaustive but are illustrative, for the CPIP-EIS:

(1) The No Action alternative.

(2) Port expansion/enhancement/improvement alternatives that increase productivity or cargo handling efficiency at existing terminals.

(3) New terminal alternatives developed in either upland or with fills into the water.

(4) Combinations of the above.

The consideration of these alternatives shall include the evaluation of the development and improvement of other ancillary infrastructure that may be necessary to accommodate changes at the port facilities.

The CPIP-EIS shall also include analysis of the direct, indirect, and cumulative impacts associated with each alternative discussed in the CPIP-EIS. At a minimum, the CPIP-EIS would evaluate proposed port-related fills, alternatives to fills, associated transportation infrastructure and projects, waterway and land side traffic congestion, socioeconomic issues, air quality, and other development-induced environmental impacts. To the maximum extent possible, the CPIP-EIS will make use of existing data that has resulted from other plans, studies, and environmental analyses.

E. Stakeholder Outreach Process

Stakeholder outreach shall be an integral part of the CPIP-EIS process. The requirements of the stakeholder outreach process, including the frequency and kind of public, business, and local government involvement, is outlined in Section III.B., below, and shall be further developed at the first meetings of the CPIP-EIS Management Committee and Stakeholder Committee.

F. Permits/Approvals and New Projects

To the maximum extent possible, given uncertainties intrinsic to future Port development actions, the appropriate level of discussion and analysis will be included in the CPIP-EIS such that agency decisions on permit applications and new projects associated with Port activities can be facilitated using the final CPIP and CPIP-EIS, which look to reflect the comprehensive plan for the future of the Port. Permits and approvals include, among others, Department of the Army permits, Coastal Zone Management Act consistency determinations, Water Quality Certification Determinations, and other applicable state permits/approvals.

III. IMPLEMENTATION PROCEDURES

A. Agency Representatives and Designees

Each Consortium member and co-lead agency will appoint a senior level manager to serve as a CPIP and CPIP-EIS "Representative," as appropriate, on a Steering Committee for the purpose of implementing their respective responsibilities under this MOU. The Representatives, consistent with the authority provided by their respective enabling statutes, regulations, and by-laws, shall speak definitively on behalf of their organizations. In turn, Representatives may appoint Designees to represent their organization on a regular basis throughout the CPIP and CPIP-EIS processes through a Management Committee. The members of the Management Committee will be responsible for overseeing and coordinating the day to day activities, consistent with each organization's role as defined in II.B. above, for the preparation of the CPIP and CPIP-EIS.

B. Meetings and Committees

The Steering Committee shall consist of the Representatives (as specified in Section III.A above) and at least one non-governmental member of the Stakeholder Committee (defined below) who represents environmental interests. The Steering Committee may expand its membership as it deems necessary. The Steering Committee shall meet at least on a quarterly basis to jointly review the progress of the CPIP and CPIP-EIS processes, and discuss resolution of any issues or concerns that have arisen and cannot be resolved at a lower level.

The Steering Committee will establish the Management Committee that will be responsible for ensuring the completion of the work and the coordination among the involved agencies. The Management Committee shall meet regularly to ensure that progress is being made, and to establish and dissolve ad-hoc and regular Working Groups as deemed necessary throughout the CPIP and CPIP-EIS processes. To the maximum extent practicable, the Management Committee will draw from or utilize existing committees and working groups from other related studies, such as the HNS, the CCMP, and New York City Economic Development Corporation committees augmented and modified as appropriate. The Representatives shall participate in the first meeting of the Management Committee; their participation in future meetings is encouraged but optional.

The Steering Committee will establish, and select members for, a Stakeholder Committee to aid in meeting the public outreach requirements of NEPA and other applicable state and local environmental laws, and to allow stakeholders the opportunity to share information and ideas for consideration by the Steering and Management Committees. To the maximum extent practicable, the Stakeholder Committee will be drawn from or utilize existing committees and working groups from other related studies, such as the HNS, the CCMP, and New York City Economic Development Corporation committees augmented and modified as appropriate. To ensure that all interested stakeholders are represented while still maintaining a manageable number of Stakeholder Committee

Members, participation in the Stakeholder Committee meetings will be open to all interested parties, but only Members will serve in an official capacity. In addition to open access to meetings, a mailing list will be established whereby all interested parties can be kept informed of discussions taking place during the Stakeholder Committee meetings. The Harbor Estuary Program (HEP) infrastructure and authority will be instrumental in developing mailing lists and supporting the development of the Stakeholder Committee. The Stakeholder Committee shall meet quarterly starting from the effective date of this MOU. The selected Designees shall hold the first Stakeholder Committee meeting specifically for the purpose of establishing a process for selecting non-governmental committee members.

All Committees and Working Groups will also elect a Chair. If a Chair is unable to fulfill her or his responsibilities, a new Chair will be elected. Working Group Chairs shall report to the Management Committee Chair on a regular basis, but not less then bi-weekly.

C. Information and Schedule for MOU-Related Actions

The Representatives and/or Designees shall agree on methods for generating information, processes, and documentation needed to support recommendations regarding actions to be addressed through the implementation of this MOU, taking into account the specific procedural requirements of the applicable programs. In no event shall recommendations delay the completion schedule of the CPIP-EIS found under Section V. below.

D. Coordinator

The Consortium, with the concurrence of the other parties to this MOU, shall designate a CPIP Coordinator. The CPIP Coordinator's duties shall include: (1) keeping minutes of meetings and circulating those minutes to all Representatives and/or Designees for review, with finalization at the following meeting, (2) preparing lists of attendees and agendas for meetings and circulating these to all Representatives and Designees at least one week prior to each meeting, and (3) other responsibilities that may be jointly agreed upon by the parties. The Consortium shall pay all costs of the CPIP Coordinator.

IV. INTERIM APPLICATION/PROJECTS PROCESSING PROCEDURES

A. Pending Applications and Projects

The USACE shall provide a list of the current status of federal permit applications proposing expansions of port facilities in the New York and New Jersey Harbor area it has received that are pending on the effective date of this MOU ("pending applications/projects"). The list is due within thirty (30) days of the effective date of this MOU. A new list will be generated and provided anytime there are proposed projects added or deleted from regulatory consideration.

The parties to this MOU agree that the processing of independently justified applications/projects shall proceed separate from the process set forth in Sections II. And III. of this MOU.

The potential impacts of the projects or permits that are pending shall be discussed in the CPIP-EIS.

B. Interim Applications and Projects

While the standard project application review process will continue, within sixty (60) days after the effective date of this MOU, the USACE shall look to formulate processing procedures that maximize the involvement of CPIP members in federal permit applications and federal projects identified as related to the subject matter of this MOU that are submitted after the effective date of this MOU, but before the date of publication of the CPIP-EIS ("interim applications and projects").

C. CPIP Limitations

The parties to this MOU acknowledge that some components of the HNS (as identified in Paragraph 362, Page 131 of the HNS draft EIS) have not been fully evaluated in that study and, therefore, are not proposed in the HNS for construction until the requisite studies are completed. Accordingly, supplemental environmental documentation will be required before construction of those components can be considered for authorization. Such supplemental environmental documentation can be included in the CPIP-EIS directly or by reference, if completed separately. Moreover, the cumulative impacts of all past, present, and reasonably foreseeable future port improvement projects, including those authorized upon completion of the HNS, shall be evaluated in the CPIP-EIS.

Transfers and changes in usage of property currently owned by Consortium members may proceed without regard to completion of the CPIP and CPIP-EIS. Any transfers and/or changes shall be subject to independent review under federal, state, and local requirements; including environmental requirements. Any impacts associated with such activities can be included in the cumulative impacts analysis in the CPIP-EIS.

V. GENERAL PROVISIONS

A. Effective Date of the MOU

This MOU is effective immediately upon being signed by the USACE, the USEPA, the Consortium members, and the Senior Executive Review Group members. Other agencies may become signatories to this MOU at any time. However, the participation of any parties signing this MOU after the effective date shall be prospective only; decisions, agreements or other actions accomplished prior to the date that such parties sign this MOU shall be deemed final with regard to them and shall not be reopened. This MOU shall continue in effect until modified or terminated by all Consortium and Co-Lead parties in the manner prescribed in Section V.D. below.

B. Time Frame for Completion

Completion schedule of the CPIP-EIS shall be held to a time frame of no more than five (5) years from the effective date of this MOU.

C. Non-Delegation of Authority

It is understood by the parties that this MOU is neither a delegation nor modification of their respective authorities and responsibilities under applicable provisions of federal, state, or local law.

D. Modification of and Termination of Participation in the MOU

The parties agree to work together to modify this MOU should such modification become necessary as a result of changed circumstances. Any party may, upon written notification to the other parties, withdraw from the MOU.

E. No Personal Liability

No Commissioner, officer, or employee of any of the signatory agencies/organizations shall be personally held liable on account of the terms of this MOU or any breach or attempted or alleged breach thereof.

VI. SIGNATURES

/s/ 12/17/99
U.S. Army Corps of Engineers Date

/s/ 12/23/99
U.S. Environmental Protection Agency Date

/s/ 01/04/00
U.S. Maritime Administration Date

/s/ 01/05/00
U.S. Coast Guard Date

/s/ 12/16/99
Port Authority of New York and New Jersey Date

/s/ 12/22/99
New Jersey Maritime Resources Date

/s/ _____
New Jersey Department of Transportation Date

/s/ 12/20/99
Empire State Development Corporation Date

/s/ 12/28/99
New York City Economic Development Corporation Date

Additional Signatories

/s/ _____
Federal Highway Administration Date

/s/ _____

Federal Railroad Administration Date

_____ _____
U.S. Surface Transportation Board Date

/s/ _____
Federal Transit Administration Date

_____ _____
U.S. Fish and Wildlife Service Date

_____ _____
National Oceanic and Atmospheric Administration Date

_____ _____
National Marine Fisheries Service Date

/s/ _____
New Jersey Department of Environmental Protection Date

/s/ _____
New York State Department of Environmental Conservation Date

/s/ _____
New York State Department of State Date

_____ _____
New York State Department of Transportation Date

_____ _____
New York City Department of Environmental Protection Date

_____ _____
New York City Department of City Planning Date

North Jersey Transportation Planning Agency	Date
/s/	
New York Metropolitan Transportation Council	Date